

FILED

JAN 22 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 DAVID DAVIS and PAGE GEARHART-DAVIS
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4

5 IN THE UNITED STATES DISTRICT
6
7 THE NORTHERN DISTRICT OF CALIFORNIA
8
9 SAN FRANCISCO DIVISION

10 DAVID DAVIS and PAGE GEARHART-DAVIS,

Case No.: C 07-03365 EDL

11 Plaintiff(s),

MOTION TO COMPEL REQUEST FOR DOCUMENT
12 vs.
CLEARLAKE POLICE DEPARTMENT,
13 Defendant(s)

14
15 The Plaintiff(s) to the above-entitled action jointly submit this Motion
16 To Compel Request For Document Production and for Discovery to Begin.

17 On November 13, 2007 after the Case Management Conference Plaintiff(s)
18 David Davis and Page Gearhart-Davis spoke with Defendant(s) counsel Dale
19 Allen regarding discovery. Dale Allen stipulated he would be giving us
20 Defendant(s) information by December 31, 2007

21 On November 29, 2007 Plaintiff Page Gearhart-Davis spoke with Defendant(s)
22 counsel Dale Allen about discovery. Plaintiff and Dale Allen talked about
23 taking depositions and weather he was willing to do them over the phone.
24 Dale Allen said he did not want to take depositions by phone and wanted to
25 meet in Santa Rosa to conduct them. No agreement was made at this time
regarding depositions.

1 On December 11, 2007, Plaintiff(s) David Davis and Page Gearhart-Davis
2 served on Defendant(s) Clearlake Police Departments' counsel Low, Ball &
3 Lynch a Request For Document Production by mail.

4 On January 14, 2008 Plaintiff Page Gearhart-Davis left a message on
5 Defendant(s) counsel Dale Allen's voice mail because she was told he would be
6 out for about a week.

7 On January 15, 2008 Plaintiff Page Gearhart-Davis spoke with Defendant(s)
8 counsel Dirk Larsen who said he was not exactly aware of what was going on
9 with the case but he would review it and call back.

10 On January 16, 2008 Plaintiff Page Gearhart-Davis spoke with Defendant(s)
11 counsel Dirk Larsen. Dirk Larsen stated he put a letter out in the mail
12 regarding why the Request for Document Production was not responded to and
13 that Dale Allen would be back in about a week and she could speak with him
14 then.

15 Plaintiff(s) David Davis and Page Gearhart-Davis request the court to
16 compel Discovery to Begin and have the Defendant(s) Clearlake Police
17 Department to produce requested documents.

18 DISPUTED DISCOVERY REQUEST & RESPONSE

19 1. **Request:** Documents, video from patrol car(s) and audio from officer(s) on
20 8-2-06 from 1:00AM-2:00AM pertaining to Ticket#49299,
21 Case#6080206 by Timothy Celli and T.W. Miller.

22 **Response:** No response.

23 2. **Request:** Documents, video from patrol car(s) and audio from officer(s)
24 on 8-3-06 from 1:00AM-2:30AM; video to also reflect where
25 Timothy Hobbs and Officer Hardesty were allegedly following

1 Plaintiff(s) vehicle, pertaining to Ticket#50128, Case#60303202
2 by Timothy Celli, Timothy Hobbs, and Officer Hardesty.

3 **Response:** No response.

4 3. **Request:** Documents, video from patrol car(s) and audio from officer(s)
5 on 8-3-06 from 1:00AM-2:30AM; video to also reflect where
6 Timothy Hobbs and Officer Hardesty were allegedly following
7 Plaintiff(s) vehicle, pertaining to Ticket#52003, Case#06-2456
8 by Timothy Celli, Timothy Hobbs, and Officer Hardesty.

9 **Response:** No response.

10 4. **Request:** Documents, video from patrol car(s) and audio from officer(s)
11 on 9-27-06 pertaining to Ticket#52021, Case#60927062 by Timothy
12 Celli and Timothy Hobbs.

13 **Response:** No response.

14 5. **Request:** Documents, video from patrol car(s) and audio from officer(s)
15 on 9-27-06 pertaining to Ticket#52022, Case#60927062 by Timothy
16 Celli and Timothy Hobbs.

17 **Response:** No response.

18 6. **Request:** Documents, video from patrol car(s) and audio from officer(s)
19 on 12-27-06 pertaining to Ticket#52310 by Timothy Celli and
20 Officer Labbe.

21 **Response:** No response.

22 7. **Request:** Dispatch record check from 8-2-06 pertaining to Ticket#49299,
23 Case#6080206.

24 **Response:** No response.

25 8. **Request:** Dispatch record check from 8-3-06 pertaining to Ticket#50128,
Case#60303202.

Response: No response.

9. **Request:** Dispatch record check from 8-3-06 pertaining to Ticket#52003,
Case#06-2456.

Response: No response.

10. **Request:** Dispatch record check from 9-27-06 pertaining to Ticket#52021,
Case#60927062.

Response: No response.

11. **Request:** Dispatch record check from 9-27-06 pertaining to Ticket#52022,
Case#60927062.

Response: No response.

12. **Request:** Dispatch record check from 12-27-06 pertaining to Ticket#52310.

Response: No response.

13. **Request:** Dispatch record check from 12-27-06 pertaining to David Davis.

Response: No response.

14. **Request:** Documents, video and audio from complaint given on 8-3-06 by David Davis and Page Gearhart-Davis to Ronald Larson.

Response: No response.

15. **Request:** Documents, video and audio from complaint given on 8-4-06 by David Davis to Officer Klausen.

Response: No response.

16. **Request:** Documents, video and audio from complaint given on 1-12-07 by David Davis and Page Gearhart-Davis to Mike Herman

Response: No response.

17. **Request:** Details of Investigation# I.A.08-03-06/90/107/132/145.

Response: No response.

18. **Request:** Details of Investigation# I.A 01-12-07/90.

1 **Response:** No response.

2 19. **Request:** Complete service record and complaints filed on Robert "Bob"
3 Chalk.

4 **Response:** No response.

5 20. **Request:** Complete service record and complaints filed on Ronald Larson.

6 **Response:** No response.

7 21. **Request:** Complete service record and complaints filed on Timothy Celli.

8 **Response:** No response.

9 22. **Request:** Complete service record and complaints filed on Mike Herman.

10 **Response:** No response.

11 23. **Request:** Complete service record and complaints filed on Timothy Hobbs.

12 **Response:** No response.

13 24. **Request:** Complete service record and complaints filed on T.W. Miller.

14 **Response:** No response.

15 25. **Request:** Complete service record and complaints filed on Officer Labbe.

16 **Response:** No response.

17 26. **Request:** Complete service record on and complaints filed Officer

18 Hardesty.

19 **Response:** No response.

20
21 Plaintiff(s) David Davis and Page Gearhart-Davis Request for Discovery to
22 Begin for the convenience of the parties in the interest of justice pursuant
23 to the provisions in Federal Rule Civil Procedure 26(d). Document Production
24 is relevant to the claim and reasonably calculated to lead to admissible
25 evidence under the Federal Rules of Civil Procedure 26(b). Plaintiff(s)
David Davis and Page Gearhart-Davis' Request for Document Production was

1 served upon Defendant(s) Clearlake Police Departments' council, Low, Ball &
2 Lynch on December 11, 2007 giving Defendant(s) reasonable time as stated in
3 Federal Rules Civil Procedure 34(b) to respond.

4 Upon Plaintiff(s) review of the electronic recording used on December 14,
5 2006 in the Superior Court of California, County of Lake, regarding Case
6 TR093498 it was obvious that the testimony given in open court had been
7 completely altered; violation of California Penal Code Section 470(c).
8 Plaintiff(s) had a Recording Engineer examine the tape whom verified this
9 (Exhibit Q & R). Plaintiff(s) feel that this Motion should be granted due to
10 previous tampering and altering of other audio and video pertaining to
11 Plaintiff(s). This case is scheduled to be heard at an Early Neutral
12 Evaluation in March 2008 in which the Plaintiff(s) want to be able to present
13 the documents requested along with this audiotape (Exhibit Q) and letter
14 (Exhibit R). If this audiotape is exposed at the ENE it leaves the
15 Defendant(s) with room and time to invest in a better quality of tampered
16 audio and video that could not be detected.

18 Dated this 18th day of January, 2008

Respectfully Submitted,

David W. Page David W. Page
DAVID DAVIS and PAGE

DAVID DAVIS and PAGE
GEARHART-DAVIS

After studying the audio excerpt in Protools (a digital audio workstation) it appears that this copy has likely been edited from the original. In one spot in particular it is evident that there was what we in the audio industry call a 'punch' in. A punch in is when the tape is rewound to a desired point and while playing or stopped, recording is engaged and the erase and record heads make contact to the tape simultaneously erasing what was on the tape and recording the audio input. The specific spot at which this happens is called a 'punch'.

located at the word "apparently" the "ly" portion of the word is clearly missing in and cut off sounding. The visual waveform representation in protocols confirms this. Approximately 2 sec earlier in the recording there is a word that has a similar but less apparent anomaly. The person says "officer you issued th....". The word after 'issued' seems to be cut off as well. Based on my experience as a professional recording engineer I would deem these 2 spots as possible punch points.

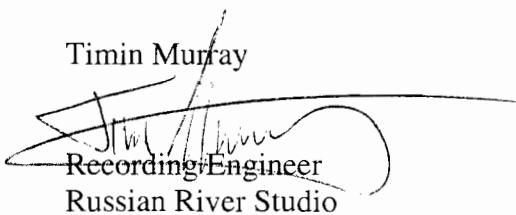
Timin Murray

Recording Engineer
Russian River Studio

Exhibit R